Express Mail No.: EB 270750179 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Tazwell L. Anderson, Jr. et al	:	Group No.: 2611
Serial No.:	09/837,128	:	Examiner: Ngoc K. Vu
Filed:	April 18, 2001	:	
For:	ELECTRONIC HANDHELD AUDIO/VIDEO RECEIVER AND LISTENING/VIEWING DEVICE	:	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: AF
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313

Applicant requests review of the FINAL Office Action in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal and with a three (3) month extension of time.

Review and reversal are requested for the reasons stated on the attached sheets.

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Remarks

Claims 18-66 remain pending, from which claims 18 and 36 are independent.

In a FINAL Office Action dated September 15, 2006, all of the pending claims were rejected as being obvious over various combinations of the prior art, and in particular the following rejections were maintained:

1. Claims 18-32, 34-38,40-48, 50-66 are rejected under 35 USC Section 103(a) as being unpatentable over Busack (USP 6,020,851) (hereafter "Busack") in view of Barstow et al. (USP 5,189,630) (hereafter "Barstow") and further in view of Koehler et al. (USSN 20010042105) (hereafter "Koehler").

2. Claims 39 and 52 have been rejected under 35 USC Section 103(a) as being unpatentable over Busack, in view of Barstow and further in view of Koehler and further in view of Khosla (USP 6,080,063) (hereafter "Khosla").

3. Claims 49 and 60 have been rejected under 35 USC Section 103(a) as being unpatentable over Busack, in view of Barstow and further in view of Koehler and further in view of Perlman (USP 6,125,259) (hereafter "Perlman").

4. Claim 33 has been rejected under 35 USC Section 103(a) as being unpatentable over Busack, in view of Barstow and further in view of Koehler and further in view of Rallison et al. (USP 5,903,395) (hereafter "Rallison").

It should be noted that each and every outstanding rejection relies upon Busack as the primary reference, to which secondary, tertiary or more references are added. Applicant submitted an After Final Amendment on December 6, 2006, traversing the above noted rejections. The After Final Amendment made only minor, non-substantive changes to the claims to address certain indefiniteness issues raised in the final Office Action. On February 6, 2007, an Advisory Action was mailed, indicating that the After Final Amendment would be entered upon appeal, but did not place the application in condition for allowance. After considering the outstanding rejection, as set forth in the Office Action and the additional comments in the Advisory Action, Applicant submits that a prima facie case of obviousness has not been established. For reasons set forth below, the system of Busack, even when modified in the manner suggested in the FINAL Office Action, still lacks a fundamental and inventive element of the claims. Further, there is not legitimate reason to modify Busack in a manner that would render obvious the claims. Applicant requests that the outstanding rejections be overturned.

Claim 18 generally concerns a portable wireless handheld device to be used at an event by a user while watching the event live. The portable wireless handheld device comprises a receiver, signal processing logic and a display. The receiver receives video content transmitted wirelessly to the receiver, where the video content is provided by a plurality of cameras located at the event that the user watches live. The signal processing logic is configured for selectable operation by a user to select video content from at least one of the plurality of cameras. The display displays video content from at least one of the plurality of cameras selected by the user, wherein the receiver is configured to receive the video content while at the event and where the event is occurring, thereby permitting the user to carry the portable wireless handheld device about the event and choose where to view said video content selected by the user while roaming at the event during the event.

Claim 36 concerns a portable wireless handheld device to be used at an event by a user watching the event live. The portable wireless handheld device comprises a receiver, signal processing logic, a display and a user interface. The receiver receives image content transmitted wirelessly to the receiver, wherein the image content is produced at a plurality of cameras at the event that the user watches live. The signal processing logic processes the image content to produce images and the display displays the images. The user interface permits the use to select at least one of the images from at least one of the plurality of sources for viewing by a user on the display, wherein the receiver is configured to receive the image signals while at an event and where the event is occurring, thereby permitting the user to carry the receiver about the event and choose where to view the selected image signal while roaming about the event during the event.

First and foremost, Applicant submits that the primary reference to Busack is misunderstood in the final Office Action and that Busack does not teach certain claim limitations for which Busack is cited. Busack describes an auto race monitoring system. The front page of Busack is reproduced below.

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US006020851A

United States Patent [19]

Busack

[11] Patent Number: 6,020,851

[45] Date of Patent: Feb. 1, 2000

[54] AUTO RACE MONITORING SYSTEM

[76] Inventor: Andrew J. Busack, 108 Freeze St., Concord, N.C. 28025

[21] Appl. No.: 08/944,306

[22] Filed: Oct. 6, 1997

[51] Int. Cl.[7] G01S 3/02; G08G 1/123

[52] U.S. Cl. ..... 342/457; 340/991; 340/323 R

[58] Field of Search ..... 342/457, 357; 340/991, 323 R

[56] References Cited

U.S. PATENT DOCUMENTS

5,299,130	3/1994	Ono	364/424.02
5,666,101	9/1997	Cazzani et al.	340/323 R
5,696,706	12/1997	Morton et al.	364/565
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Primary Examiner—Mark Hellner
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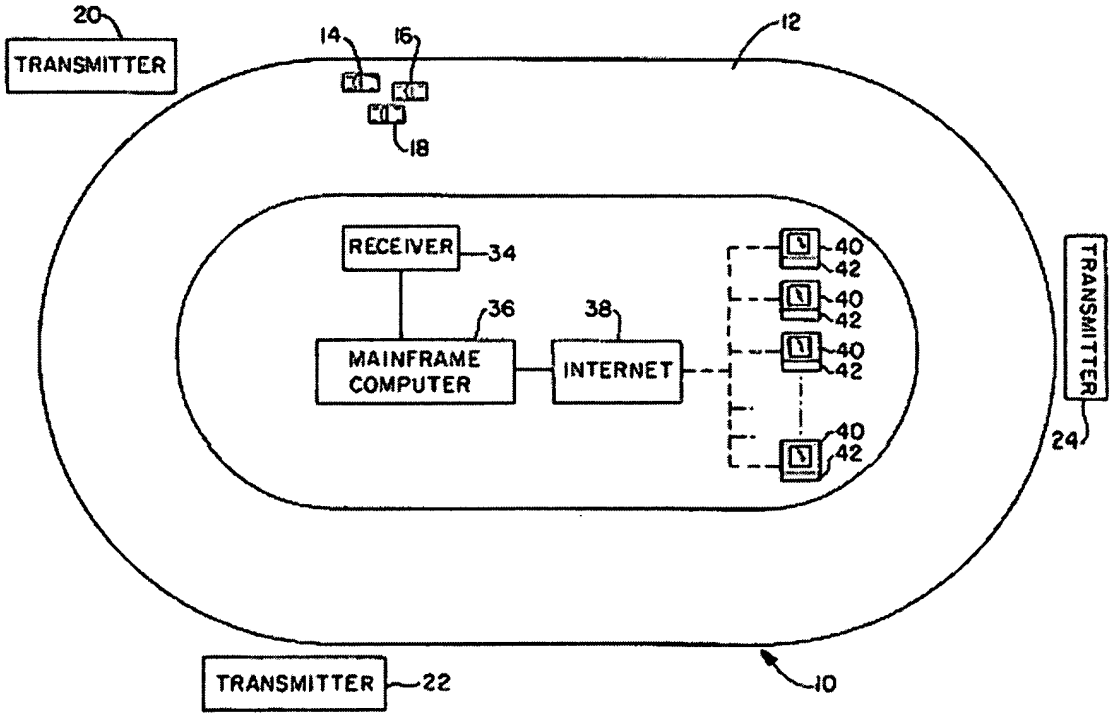
[57] ABSTRACT

An auto race monitoring system provides a race track with a ground positioning system which includes at least three transmitters, transmitting signals to be received by at least a pair of receivers in each of the race cars. Those receivers instantaneously determine their position and, accordingly, exact position and attitude of the race car upon the race track. This information, along with data respecting race car parameters such as vehicle speed, engine temperature and oil pressure, are sent by means of a transmitter to a receiver interconnected with a main frame computer which uses such information to replicate each of the vehicles in the race in real time. The replicated information is made available to the internet and the audio/video receivers connected thereto. Accordingly, a viewer can select any particular race car which he desires to monitor at any particular time in the race and not only view a replication of that vehicle, but also monitor vehicle parameters and listen in on communications between the driver and pit crew.

8 Claims, 1 Drawing Sheet



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In the final Office Action, it is stated that "Regarding claim 18, Busack discloses a device (40, 42) to be used at an event (auto race) by a user while watching the event live. . . . " (see page 2 of the final Office Action). A substantially similar statement is made with respect to independent claim 36. Interestingly, while the final Office Action cites specific text sections of prior art references (by column and line) for other aspects of the prior art, the final Office Action provides NO CITATION to the text of Busack to support the interpretation that the devices 40,42 are located at the event. This interpretation was challenged in the After Final Amendment, and in response, in the Advisory Action the following was stated:

> Applicant merely argues that Busack's device is not at an event. In response, Busack's receiver devices (40,42) are located at the auto race event as illustrated in figure 1. Particularly, the receiver devices are located inside race track 10 as shown in figure 1. Furthermore, the system of Busack allows a viewer to selectively watch not only his/her favorite vehicle during the race but also physical parameters of the race car such as speed, oil pressure .... etc, and/or listen to communications between the driver and pit crew. See abstract and figure 1. Therefore, Busack's receiver device is used at an event by a viewer while watching the event.

It is respectfully submitted that Busack has been misunderstood in the final Office Action and Advisory Action. Busack does NOT teach (either expressly or inherently) that devices (40, 42) are used AT an event while the user watches the event LIVE. Nor is there any suggestion in Busack (or elsewhere in prior art) that the device 40, 42 of Busack would or could be used at an event while the user watches the event live. Instead, Busack's teachings are quite clear that the computer 40 and keyboard 42 are to be used remote from the event, not at the event. The problem addressed, and solution offered, by Busack only make sense for individuals who are remote from the event. Individuals who attend events live would not suffer the problem that Busack seeks to overcome. In the BACKGROUND ART section, Busack characterizes the problem as follows at column 1, lines 13-24 and lines 35-45):

> Auto races are extremely popular throughout the country. Often, these races are viewed by fans through television broadcasts. However, such broadcasts only allow the viewer to actual see those cars which are focused upon by the video camera. Typically, only the lead cars are the focus of the broadcaster's attention. Those who follow auto racing, however, are more interested in the activities of their favorite driver, than in only the pack leading the race. As a consequence, some viewers many only be able to see their favorite car and racer once or twice during an entire race if that car is not fortunate enough to be among the leaders in the race.

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> There is a need in the art for those who closely follow auto racing to provide a means for selective real time monitoring of any of the cars in a race during the race. Moreover, there is a need in the art for such a system which allows the viewer to not only visually follow his selected car and driver throughout the race, but which also allows the viewer to monitor some of the physical parameters of the race car, such as speed, oil pressure, fuel remaining and engine temperature, and which also would accomodate listening in on communications from the driver and his pit crew.

The forgoing discussion of conventional TV coverage, and the problem that individuals suffer, which Busack seeks to overcome, only makes sense when the individual is not attending the event. The problem addressed by Busack is only true for viewers who are watching the event remotely on TV. It does not make sense that a viewer, who is attending an event, could not watch their favorite car and racer live during the event. Instead, it is clear that the problem that Busack intends to address is a problem only for remote viewers who are watching the event remotely over a TV or other network broadcast, and who are not attending the event live.

Further, in the DISCLOSURE OF INVENTION section, Busack characterizes the invention in a manner that only makes sense for individuals who are remote from the event. Busack characterizes aspects of the invention as follows at column 1, lines 55-67:

> Still a further aspect of the invention is the provision of an auto race monitoring system in which an accurate replication of each vehicle is made during the race, in real time, and is provided along with information respecting the various operational parameters of the race car, such as speed, engine temperature and oil pressure.
>
> Yet an additional aspect of the invention is to provide an auto race monitoring system which provides for replicating not only the position of a race car on a race track, but its attitude on that track.
>
> Still an additional aspect of the invention is the provision of an auto race monitoring system which provides for broadcasting and presenting a race upon the internet.

In Busack's own words, the invention provides a system in which an accurate replication of each vehicle is made during the race and provides for replicating, not only the position of the cars, but also their attitude on the track (column 1, lines 55-64). An individual who is attending an event live would not find any value or interest in viewing **computer generated replications** of each vehicle. Instead, the individual watching the event live would be able to see the actual

cars live. Also, as noted above in the DISCLOSURE OF INVENTION section, Busack states another aspect of the invention is to present a race over the Internet. Given the time needed to generate a computer replication of the race and transmit it over the internet, a delay would be introduced such that a person attending the event would see the actual car (both its position and attitude) well before the computer generated replication could be presented on Busack's devices (40, 42). Busack's replication would only be of interest and have value to individuals who are not attending the event, but instead are remote.

Moreover, the BEST MODE FOR CARRYING OUT THE INVENTION section of Busack only describes embodiments, for which the computer 40 and keyboard 42 are remotely used. At column 3, lines 24-32, Busack explains that a mainframe computer 36 is interconnected with the World Wide Web 38 to provide the capability of transmitting to any computer 40 which has access to the internet. Each computer 40 can select any desired vehicle for monitoring during any point in the race. It would not make sense for Busack's system to implement a mainframe computer 36 that generates a replication of the event, that establishes an internet connection 38 and that transmits the replications over the internet to computers 40 located at the event. The route through the World Wide Web would introduce an undesirable amount of delay in connection with Busack's simulation or replication of a race. Thus, it is clear that Busack's computers 40 and keyboards 42 are not for use by a user at an event.

In the Advisory Action, it is suggested that Figure 1 of Busack shows devices in the in-field of the race track. Figure 1 also shows the mainframe and internet within the in-field of the race track. The positioning within Figure 1 is merely for convenience and to consolidate graphics. Figure 1 is not indicating the actual location of the mainframe computer, internet or devices. As explained above, Busack's teachings are inconsistent with locating the devices in the in-field of the race track.

The references to Barstow and Koehler fail to make up for the deficiencies of Busack. Koehler describes a system for listening to and viewing race events where remote computers 42 are interconnected over the internet to a server. The devices in Koehler's system are also remote from the event and afford individuals the ability to listen to and watch races from the convenience of their home over their computer. Thus, Koehler's and Busack's teachings are

cumulative, to the extent that both only teach that it is desirable to provide a remote viewer with information related to an event over the Internet where the remote viewer monitors the event from a remote computer. No reference has been sited to make up of this deficiency. Thus, the combined teachings of Busack, Koehler and Barstow fail to teach or suggest the inventions of claims 18 and 36. In particular, regarding claim 18, the prior art fails to teach or suggest:

> a receiver configured to receive video content transmitted wirelessly to said receiver, said video content being provided at a plurality of cameras located at said event;
>
> signal processing logic configured for selectable operation by a user to select video content from at least one of said plurality of cameras; and
>
> a display configured to display video content from at least one of said plurality of cameras selected by said user, wherein said receiver is configured to receive said video content while at the event and where the event is occurring, thereby permitting the user to carry said portable wireless handheld device about the event and choose where to view said video content selected by the user while roaming at the event during the event.

Regarding claim 36, the prior art fails to teach or suggest:

> a receiver configured to receive image content transmitted wirelessly to said receiver, said image content being produced at a plurality of cameras at said event;
>
> signal processing logic for processing said image content to produce images;
>
> a user interface for selecting at least one of said images from at least one of said plurality of sources for viewing by a user on said display, wherein said receiver is configured to receive said image signals while at an event and where the event is occurring, thereby permitting the user to carry said receiver about the event and choose where to view said selected image signal while roaming about the event during the event.

In view of the foregoing, it is respectfully submitted that a prima facie case of obviousness has not yet been made as fundamental components of claims 18 and 36 are entirely lacking from the prior art.

Moreover, the final Office Action fails to set forth a prima facie case of obviousness as no motivation has been established to modify Busack's system to provide a receiver, signal processing logic and a user interface that permit users to select video or image content from a plurality of cameras located at the event. As required by the Supreme Court in Graham v. John

Deere, 383 U.S. 1, 148 USPQ 459 (1966), when determining obviousness under §103, the following factors must be considered:

(A) Determining the scope and contents of the prior art;
(B) Ascertaining the differences between the prior art and the claims in issue;
(C) Resolving the level of ordinary skill in the pertinent art; and
(D) Evaluating evidence of secondary considerations. (MPEP §2141(I).

As set forth in MPEP §2141(II), when applying 35 U.S.C. §103, the following tenets of patent law must be adhered to:

(A) The claimed invention must be considered as a whole;
(B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
(C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
(D) Reasonable expectation of success is the standard with which obviousness is determined. Hodosh v. Block Drug Co., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

To establish a prima facie case of obviousness, among other things, (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and (2) there must be a reasonable expectation of success. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The mere fact that the references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the present matter, it is submitted that the outstanding Office Action fails to set forth a legitimate motivation for one of ordinary skill to modify Busack in a manner that would render obvious the claimed invention.

As stated in the final Office Action, "Busack does not teach that the device is a portable wireless handheld device for wirelessly receiving video content and permitting the user to carry the portable wireless handheld device about the event and choose where to view the video content selected by the user while roaming at the event during the event". Allegedly, Barstow makes up for this deficiency.

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It is respectfully submitted that Barstow does NOT. Barstow describes a method of encoding and broadcasting information regarding live events. In Barstow's system, an observer at an event uses a computer to enter start and end times and related textual information in connection with individual events. The observer, at the event, in Barstow's system **is not viewing video content associated with the event from multiple cameras**, but instead is entering, into a computer, start and end times and other event related statistical data to be compiled in a database and **subsequently used by a remote viewer**. The remote viewer in Barstow's system is NOT afforded with the ability to select between video content from multiple cameras. Instead, Barstow's remote viewer is permitted the ability to view individual subevents (e.g., individual plays in a game) where the subevents are partitioned within the overall event based upon the start and end time information entered by the observer. The remote viewer may view the individual subevents from a database. Barstow's viewer is not permitted to select between video content from a plurality of cameras located at the event while roaming at the event.

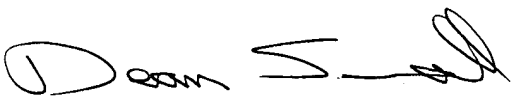
Further, one of ordinary skill would NOT have been motivated by the teachings of Barstow to modify Busack's device to include the claimed receiver, signal processing logic and display to permit a user to select video content from a plurality of cameras at an event for viewing by the user while the user roams about the event. Busack's device provides a computer simulation or replication of a race over the internet to a remote viewer. Barstow's system permits remote viewers to view individual subevents downloaded from a database after each subevent has been coded with start and end times. Busack's system does NOT include any video cameras, but instead simply uses position tracking transmitters and receivers to follow the positions of the cars. The position information is used by Busack to create the computer generated replication of the race. Therefore, in order to add video content to Busack's device, as suggested in the final Office Action, one of ordinary skill would need to add a complete video/image infrastructure at the event to convey separate video or image feeds from each camera to the remote devices 40, 42. For example, in order to afford Barstow's subevent viewing (albeit remote) the infrastructure would necessarily include a plurality of cameras, camera operators, cabling, an on-site production facility, a network infrastructure, individuals at the event entering start and end times for each subevent and the like. None of this video

infrastructure or personnel exists within Busack's system and there is no legitimate reason to add it. Thus, the Final Office Action fails to establish a prima facia case of obviousness.

In addition, it is submitted that the dependent claims recite additional patentably distinct features. Claims 19 and 20 further define the receiver of the portable wireless handheld device to receive video content that also originates at another event that is remote from the event that the user is attending live. By providing remote video content, in addition to video content from a plurality of video cameras located at the local event, the user is afforded additional viewing options. Claim 21 further recites the additional limitation that the receiver wirelessly receives a plurality of audio signals associated with the event and that the portable user interface allows the user to select one of the audio signals. The prior art fails to teach or suggest this additional limitation of the receiver. Claim 25 further defines the device to have a portable user interface and further defines the receiver to receive a plurality of multiplexed video signals. One of the multiplexed video signals is selected using the user interface. For the avoidance, it should be understood that the multiplexed video signals may be received at the receiver over a common frequency or over separate frequencies. In addition, the video signals may be transmitted from a single transmitter or from multiple transmitters. The prior art fails to teach or suggest the reception at a wireless handheld device of a plurality of multiplexed video signals. Thus, the prior art necessarily fails to teach or suggest the use of a user interface that selects one of the multiplexed video signals.

In view of the foregoing, it is respectfully submitted that the pending claims define allowable subject matter and reversal of the outstanding Office Action is respectfully requested.

Respectfully Submitted,



Date: March 15, 2007

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